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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,442	02/12/2004	Eric C. Humphries	102491-100	4785
27267 7590 07/09/2007 WIGGIN AND DANA LLP ATTENTION: PATENT DOCKETING ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832			EXAMINER LUKS, JEREMY AUSTIN	
			ART UNIT 2837	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/777,442

Applicant(s)

HUMPHRIES ET AL.

Examiner

Jeremy Luks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-9,11-15,17-19,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7-9,11-15,17-19,22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/18/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 7 is objected to because of the following informalities: Claim 7 is dependent on claim 1, and claim 1 defines the first and second flanges and the base portion begin formed from a single material. Claim 7 then changes the scope by forming the elements from separate materials. The Examiner considers these limitations to contradict one another, rendering the claim improper. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 15, 17 and 18 rejected under 35 U.S.C. 102(b) as being anticipated by Christensen (5,984,044). Christensen teaches a traffic noise barrier wall (Figure 1) comprising: a first vertically-mounted post (12) including a first slot disposed therein (clearly seen in Figure 1), the first slot extending lengthwise along a side of the first post (12) and having a first width; a second vertically-mounted post (12) spaced apart from the first post (12), the second post including a second slot disposed therein (clearly seen in Figure 1), the second slot extending lengthwise along a side of the

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second post (12) and having a second width; and a first panel assembly (16, 18) extending between the first and second posts (12) and into both said first slot and said second slot (see Figure 1), the first panel assembly (16, 18) including: a sheet (16) of material having top, bottom, and side edges forming a perimeter of the sheet (Col. 3, Lines 1-4), said sheet (16) having a sheet thickness that is less than said first slot width (See Figures 4 and 4A), and a frame (18) disposed along at least a portion of the perimeter of the sheet (16), wherein side portions of the frame include a base portion (middle portion of #18 arranged along the side edge) disposed along one of the side edges of the sheet (16) and first and second flange portions (portion of #18 perpendicular to and extending from the aforementioned base portion, completing the U-shape of #18) projecting outward from the base portion on opposite sides of the sheet (16) to define an edge thickness and to capture at least a portion of the side edges of the sheet (16), wherein said base portion and said first and second flanges (18) are formed from a single material (Col. 3, Lines 41-42) and wherein said edge thickness is greater than said sheet thickness and less than said first slot width such that the side portions of the frame (18) are effective for being received within the first and second slots in drop-down fashion (See Figures 1 and 4, 4A); wherein the sheet has a thickness substantially less than a width of each of the first and second slots (See Figures 4 and 4A); and wherein the sheet has a thickness less than a thickness of the first flange and less than a thickness of the second flange (See Figures 4 and 4A).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5, 8, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (5,984,044) in view of Neumann (6,253,872).

Christensen is relied upon for the reasons and disclosures set forth above. Christensen further teaches the outer surfaces of a frame (Figures 1, 4 and 4A; #18) disposed inside a cavity (formed by H-configuration of posts #12). Christensen fails to teach wherein an elastomeric gasket is disposed between the outer surfaces of the side portions of the frame and surfaces forming the channel, and wherein an elastomeric gasket covers at least a portion of the side edge of the sheet captured within the channel. Neumann teaches wherein an elastomeric gasket (Figure 2, #5) is disposed between the outer surfaces of the side portions of the frame (ribs #4 could be a frame) and surfaces forming the channel (see channel formed in rails #2), and wherein an elastomeric gasket (5) covers at least a portion of the side edge of the sheet (2) captured within the channel (see channel formed in rails #2). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Christensen, with the apparatus of Neumann to increase support for the panel within the cavity. The

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Examiner also recognizes, as one of ordinary skill in the art, that such a gasket would further dampen sound.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (5,984,044) in view of Schondelmayer (6,314,687). Christensen is relied upon for the reasons and disclosures set forth above. Christensen further teaches first and second flange portions extending from a base (Figures 1, 4 and 4A; #18). Christensen fails to teach wherein the first and second flanges are formed from tubing coupled to a plate forming the base portion. Schondelmayer teaches wherein first and second flanges (298) are formed from tubing coupled to a plate forming the base portion (20) (See tube configuration of flange 298, Figure 19). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Christensen, with the apparatus of Schondelmayer to increase the rigidity and strength of the apparatus.

5. Claims 9, 11, 14, 23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (5,984,044) in view of Johnson (7,063,184). Christensen is relied upon for the reasons and disclosures set forth above. Christensen further teaches wherein the first and second flanges (Figures 1, 4 and 4A, outer portions of #18) are coupled to a surface of the base portion (middle portion of #18). Christensen fails to teach wherein the base portion is disposed outside the entire perimeter of the sheet, and the channel formed by the base portion and the first and second flanges capture a portion of each of the top, bottom, and side edges of the sheet; wherein the first and second flanges disposed on each of the top, bottom, and

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side edges of the sheet are coupled to a surface of the base portion; and wherein the frame extends along the entire perimeter of the sheet and captures at least a portion of each of the top, bottom and side edges of the sheet. Johnson teaches wherein a base portion (Figures 17, 18, #143) is disposed outside the entire perimeter of the sheet (30) (Col. 11, Lines 35-48), and the channel formed by the base portion (143) and the first (141) and second (142) flanges capture a portion of each of the top, bottom, and side edges of the sheet (30); wherein the first (141) and second (142) flanges disposed on each of the top, bottom, and side edges of the sheet (70) are coupled to a surface of the base portion (143); and wherein the frame (60B) extends along the entire perimeter of the sheet (30) and captures at least a portion of each of the top, bottom and side edges of the sheet (30). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Christensen, with the apparatus of Johnson to increase the rigidity of the structure and better protect the sheet member.

6. Claims 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (5,984,044) in view of Johnson (7,063,184), as applied to claims 9 and 23, and further in view of Donnelly (2003/0019170). Christensen and Johnson are relied upon for the reasons and disclosures set forth above. Christensen further teaches a second panel assembly (Figure 1, #16') extending between the first and second posts (12). Christensen and Johnson fail to teach wherein the frame of the first panel assembly includes at least one of a protrusion and a recess disposed on the base portion for interlocking with the second panel assembly. Donnelly teaches wherein the frame of a first panel assembly (20) includes at least one of a protrusion (40) and a

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recess (30) disposed on a base portion for interlocking with the second panel assembly (20) (Page 2, [0043]). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Christensen as modified, with the apparatus of Donnelly to interlock adjacent panel members, increasing the overall strength and rigidity of the apparatus.

7. Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (5,984,044) in view of Pickett (4,214,411). Christensen is relied upon for the reasons and disclosures set forth above. Christensen fails to teach wherein the sheet is formed from a transparent material. Pickett teaches a sheet (Figure 1, #2) formed from a transparent material (Col. 2, Lines 59-66). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Christensen, with the apparatus of Pickett to provide travelers with a view outside of the roadway, while still protecting the surrounding neighborhood from noise of road traffic.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 3-5, 7-9, 11-15, 17-19, 22, 23 and 26-28 have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers the obvious combination of Christensen, Neumann, Schondelmayer, Johnson, Donnelly, and Pickett to teach all of the limitations as claimed by Applicant.



***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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